SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 56

ALASKA STEAMSHIP COMPANY, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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NAMES AND ADDRESSES OF COUNSEL.

Messrs. BOGLE, BOGLE & GATES, Attorneys for Appellant,
609 Central Building, Seattle, Washington.

Messrs. ANTHONY SAVAGE and JEFFREY HEIMAN, Attorneys for Appellee,
310 Federal Building, Seattle, Washington.

[1*]

In the District Court of the United States, Western District of Washington, Northern Division.

No. 20,361.

ALASKA STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT.

Comes now the plaintiff, and for cause of action against the defendant alleges:

I.

That the plaintiff is now and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the

*Page number appearing at the foot of page of original certified Transcript of Record.

State of Nevada; that it is licensed to do business in the State of Washington, and has paid to the State of Washington its annual license fee last past due; that it is resident within the Western District of Washington, having its principal place of business in the City of Seattle, County of King, State of Washington.

II.

That the defendant is now and at all times hereinafter mentioned was a sovereign state.

III.

That the plaintiff is now and at all times hereinafter mentioned was the owner and operator of the following merchant vessels of the United States engaged as common carriers for hire, to wit: The SS. "Yukon" and the SS. "Depere," which said vessels were and now are operated by the plaintiff between the Port of [2] Seattle and ports in the Territory of Alaska.

IV.

That on or about the 15th day of December, 1929, the aforesaid SS. "Depere" was wrecked at or near Port McArthur in southeast Alaska. That the crew of said vessel, consisting of thirty men, was taken ashore at said Port McArthur and thence transported to Ketchikan, Alaska. That the United States Customs Office at Ketchikan, Alaska, was notified of said shipwreck and of the coming of the aforesaid crew to Ketchikan. That the United States Customs Office, acting through Mr. M. S. Dobbs, Deputy Collector of Customs at Ketchikan, took full charge of said shipwrecked crew upon

their arrival at Ketchikan, and provided subsistence for said crew until arrangements could be made for their transportation to the United States.

V.

That the aforesaid SS. "Yukon," belonging to the plaintiff, stopped in the Port of Ketchikan, Alaska, en route for Seattle, during the time when the shipwrecked crew of the SS. "Depere" was in the care of the United States Deputy Collector of Customs, M. S. Dobbs. That the said Deputy Collector of Customs, acting for and on behalf of the defendant, and in pursuance of the laws and regulations of the United States providing for the care of shipwrecked seamen, to wit: U. S. C. A., Title 46, Sections 678, 679, 680 and 681, requested and required the master of the said SS. "Yukon" to transport the aforesaid shipwrecked crew to Seattle, Washington, on board the SS. "Yukon." That the plaintiff was thereby required by force of the above cited statutes to take on board its vessel, the said SS. "Yukon," the aforesaid destitute seamen and to transport said destitute seamen to the United States: That on November 20, 1929, the said Deputy Collector of Customs, [3] acting for and on behalf of the defendant, agreed in writing with the said master of the SS. "Yukon" that compensation in the total sum of $397.20 should be paid by the defendant for the transportation of said crew of thirty men to the Port of Seattle, Washington. That the said Deputy Collector of Customs issued to the aforesaid master of the SS. "Yukon" a shipwrecked seamen's certificate, a

certified copy of which certificate, marked Exhibit "A," is hereto attached and by reference incorporated herein, and made a part of this complaint. That said certificate in part provides as follows:

> "I have agreed with the said master that upon presentation of this certificate at the Treasury Department, bearing an indorsement of the Collector of Customs at the Port of Seattle, Washington aforesaid that the seamen mentioned have been brought into his District by said vessel, he shall be entitled to receive the sum of Three hundred ninety seven & 20/100 dollars for their passage, being the sum of Thirteen and 24/100 dollars for each seaman.
>
> * * * * * * * *
>
> "Given under my hand and seal of office this 20th day of November, 1929.
>
> "M. S. DOBBS,
> "Deputy Collector of Customs."

VI.

That thereafter and in pursuance of the said request of the aforesaid United States Deputy Collector of Customs, and the aforesaid agreement between the master of the SS. "Yukon" and the aforesaid Deputy Collector of Customs, the said master took on board the SS. "Yukon" the shipwrecked crew of the SS. "Depere," consisting of thirty men, and sailed from Ketchikan, Alaska, for the Port of Seattle, Washington. That the aforesaid shipwrecked crew was transported to and

landed at the Port of Seattle on the 22d day of November, 1929, which fact is certified by the United States Collector of Customs of the Port of Seattle in a certificate [4] attached to the aforesaid Shipwrecked Seamen's Certificate, marked Exhibit "A" and attached hereto.

VII.

That thereafter, to wit, on the 2d day of December, 1929, the plaintiff sent to the Treasury Department of the United States Government a statement of the account owing to the plaintiff from the defendant in the sum of $397.20, together with the Destitute Seamen's Certificate above mentioned, properly endorsed by the Collector of Customs at Seattle, Washington, the aforesaid sum of $397.20 being the compensation owing to the plaintiff for the transportation of said shipwrecked crew as evidenced by the said Destitute Seamen's Certificate. That shortly thereafter the Comptroller General of the United States, on behalf of the defendant, unlawfully and arbitrarily refused to pay said compensation to the plaintiff, and arbitrarily placed upon the statutes above cited a wrongful and unlawful construction, and held that upon the facts as set forth herein the plaintiff was not entitled to the compensation as provided in Section 679 of Title 46, U. S. C. A., for the reason that the facts as herein set forth did not come within the meaning of said statutes, all of which action on the part of the Comptroller General was arbitrary and contrary to law. That the said ruling and the said refusal of the Comptroller General of the United

States to pay the claim of the plaintiff was embodied in a letter dated January 29, 1930, which letter, together with the aforesaid statement of the account sent to the Treasury Department of the defendant, is attached hereto, marked Exhibit "B" and made a part hereof. The aforesaid letter of the Comptroller General is as follows:

"SETTLEMENT CERTIFICATE
"GENERAL ACCOUNTING OFFICE
"CLAIMS DIVISION [5]
"Washington, D. C.

"January 29, 1930.

"Alaska Steamship Company
"Room 4, Pier 2,
"Seattle, Washington.

"Sirs:

"Your Claim No. 07502(1) for $397.20 on account of transportation on your SS. 'Yukon' furnished 30 shipwrecked seamen on the SS. 'Depere' owned and operated by your company, which was wrecked at Port McArthur, S. E. Alaska, November 15, 1929, has been carefully examined and it is found that no part thereof may be allowed for reasons hereinafter stated.

"The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator and where this duty has been undertaken the appropriation for the 'Relief and Protection of American Seamen' is not available to reimburse the owner or operator for the expense incurred in performing such duty.

"I therefore certify that no balance is found due you from the United States.

"Respectfully,

"J. R. McCARL,

"Comptroller General of the United States.

"By: (Signed) F. A. SHUMAKER."

VIII.

That the aforesaid action of the Comptroller General of the United States in refusing to pay the claim of the plaintiff as set forth herein constitutes an arbitrary and wrongful act; that the aforesaid ruling of the Comptroller General represented by the above-quoted letter is an arbitrary and unlawful construction and interpretation of the above-cited statutes, and that such construction and interpretation placed upon the said statutes by the Comptroller General is arbitrary and illegal in the following respects, to wit: It violates and contravenes the statutes of the United States expressly allowing conpensation to shipowners transporting [6] shipwrecked seamen to the United States, and making it the duty of the consular officers and commercial agents of the United States, and not of the owners of the shipwrecked vessel, to provide subsistence and transportation for the shipwrecked crew to some port in the United States; it renders said statutes unconstitutional and in violation of the Fifth Amendment of the Constitution of the United States, in that it results in a taking of property without just compensation or due process of law.

IX.

That although due demand has been made for the payment of the said claim and indebtedness aforesaid, the same has not, nor has any part thereof, been paid, and that the same is now due and owing from the defendant to the plaintiff.

WHEREFORE, plaintiff prays judgment against the defendant in the sum of $397.20, together with interest from the 29th day of January, 1930, until paid, together with plaintiff's costs and disbursements herein to be taxed.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff. [7]

EXHIBIT "A."

CERTIFICATE GIVEN BY CUSTOMS OFFICERS TO MASTERS OF VESSELS TRANSPORTING SHIPWRECKED AMERICAN SEAMEN TO THE UNITED STATES FROM ALASKA.

DEPARTMENT OF COMMERCE AND LABOR
BUREAU OF NAVIGATION.

Office of Deputy Collector of Customs,
Port of Ketchikan, Alaska,
November 20th, 1929.

I HEREBY CERTIFY that I have sent to Seattle, Washington, on board the American St. S. YUKON, of 3,638 tons burden, whereof C. A. Glasscock is master, the following shipwrecked American Seamen:

Name of Seamen.	Name of vessel on which they last served.	Home port of vessel and time and place of wreck.
As per list attached	Am. St. S. DEPERE (220449)	New York 7:55 P. M. November 15, 1929 Port McArthur, S. E. Alaska
John Johanson	Pilot	
George J. Decker	2nd Officer	
Robert Stevens	3rd Officer	
Aldon Forron	Seaman	
Rennie Brandon	"	
Fred Burns	"	
Alfred Sundby	"	

Name of Seamen.	Name of vessel on which they last served.	Home port of vessel and time and place of wreck.
Raymond Torris	Seaman	
George Hanson	"	
Robert Brazant	"	
Walter Houlton	"	
Arthur Howgate	Cargo Handler	
Ingvald Johansen	"	
William Martinsen	"	
Nels Christoffersen	Engineer	
John Karlson	"	
Wayne Davis	"	
Charles McDonald	Oiler	
Albert Vann	"	

Name of Seamen.	Name of vessel on which they last served.	Home port of vessel and time and place of wreck.
Gilbert Gonyeau	Oiler	
Murdock LeCain	Firemen	
Cornelius Vandermark	"	
George Angle	"	
Frank O'Neill	Wiper	
Geo. W. Parks	Purser	
John Schilling	Steward	
Joseph Jackson	Cook	
Wilford Edwards	Galley	
Jas. Caldwell	Messman	
James Ponte	Mess boy	
Total- 30		

I have agreed with the said master that upon presentation of this certificate at the Treasury Department, bearing an indorsement of the Collector of Customs at the port of Seattle, Washington, aforesaid that the seamen mentioned have been brought into his District by said vessel, he shall be entitled to receive the sum of Three hundred ninety seven & 20/100 dollars for their passage, being the sum of Thirteen and —— 24/100 dollars for each seaman. But if the voyage shall continue beyond the period of thirty days from the date of sailing, and it shall be so certified by the Collector of Customs, the said master shall be entitled to receive the sum of —— dollars for their passage, being the sum of —— dollars for each seaman.

And I further certify that the regular charge for steerage passage on said vessel from this port to Seattle, Washington, in the United States is $17.00, and that the distance is 662 miles.

Given under my hand and seal of office this 20th day of November, 1929.

[Seal] M. S. DOBBS,
Deputy Collector of Customs.

Office of the Collector of Customs,
Port of Seattle, Wash.
November 22, 1929.

I HEREBY CERTIFY, under seal of my office, that the seamen, to the number of 30, named in the above Customs certificate, have arrived within this District on the above-named vessel, of 3638 net tons burden, as per register, enrollment, or license on

file in this office, and that the voyage from Ketchikan, Alaska, covered a period of 2 days.

[Seal] OSCAR W. DAM,
Deputy Collector of Customs.

(Foregoing certificate bears following certificate stamped upon the face thereof:)

CUSTOMS HOUSE,
Ketchikan; Alaska.

I certify this is a true copy as appears by the records of this office.

(Sgd.) M. S. DOBBS,
Deputy Collector.

Date—March 10, 1930. [9]

EXHIBIT "B."

SETTLEMENT CERTIFICATE
GENERAL ACCOUNTING OFFICE
CLAIMS DIVISION.
Washington, D. C.

January 29, 1930.

Alaska Steamship Company,
Room 4, Pier 2,
Seattle, Washington.

Sirs:

Your Claim No. 07502(1) for $397.20 on account of transportation on your SS. "Yukon" furnished 30 shipwrecked seamen of the SS. "Depere" owned and operated by your company, which was wrecked at Port McArthur, S. E. Alaska, November 15, 1929, has been carefully examined and it is found that no part thereof may be allowed for reasons hereinafter stated.

The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator and where this duty has been undertaken the appropriation for the "Relief and Protection of American Seamen" is not available to reimburse the owner or operator for the expense incurred in performing such duty.

I therefore certify that no balance is found due you from the United States.

Respectfully,

J. R. McCARL,

Comptroller General of the United States.

By: F. A. SHUMAKER. [10]

Copy.

ALASKA STEAMSHIP COMPANY,

Room 4, Pier 2. Phone Main 4530.

Seattle, Washington.

December 2nd, 1929.

State Department,

Washington, D. C.

Transportation furnished to 30 wrecked seamen from the Am. ss DEPERE, Ketchikan to Seattle ex ss YUKON @ 13.24 each 397.20

[Endorsed]: Filed April 29, 1930. [11]

ANSWER.

Comes now the defendant United States of America, by Anthony Savage, United States Attorney for the Western District of Washington, and Jeffrey Heiman, Assistant United States Attorney

for said district, and for answer to the complaint of the plaintiff on file herein, answers, admits and denies as follows:

I.

In answer to Paragraph I of plaintiff's complaint, defendant admits the same.

II.

In answer to Paragraph II of plaintiff's complaint, defendant admits the same.

III.

In answer to Paragraph III of plaintiff's complaint, defendant denies each and every allegation contained therein.

IV.

In answer to Paragraph IV of plaintiff's complaint, defendant denies each and every allegation contained therein.

V.

In answer to Paragraph V of plaintiff's complaint, defendant denies each and every material allegation contained therein. [12]

VI.

In answer to Paragraph VI of plaintiff's complaint, defendant denies each and every material allegation contained therein.

VII.

In answer to Paragraph VII of plaintiff's complaint, defendant denies each and every material allegation contained therein, except that it admits

sending the letter set out in said paragraph signed by the Comptroller General of the United States.

VIII.

In answer to Paragraph VIII of plaintiff's complaint, defendant denies each and every material allegation contained therein.

IX.

In answer to Paragraph IX of plaintiff's complaint, defendant denies each and every material allegation contained therein.

WHEREFORE, having fully answered the complaint of the plaintiff herein, the defendant prays that this cause of action be dismissed and that it have and recover its costs and disbursements to be taxed herein.

ANTHONY SAVAGE,
United States Attorney.
JEFFREY HEIMAN,
Assistant United States Attorney.

Filed June 25, 1931. [13]

STIPULATION WAIVING JURY TRIAL.

IT IS HEREBY STIPULATED by and between the parties to the above-entitled cause that a jury in said cause be, and the same is hereby waived.

BOGLE, BOGLE & GATES,
Attorneys for Plf.
ANTHONY SAVAGE,
U. S. Atty.
JEFFREY HEIMAN,
Asst. U. S. Atty.

Filed Feb. 24, 1932. [14]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 20,361.

ALASKA STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT OF DISMISSAL.

This cause having heretofore come on for hearing and the motion of the defendant for judgment having heretofore been granted, now therefore,

IT IS ORDERED, ADJUDGED AND DECREED that this cause be, and the same is hereby dismissed and the defendants awarded judgment against the plaintiff for its costs and disbursements herein to be taxed.

To the foregoing and each and every part thereof the plaintiff excepts and its exception is allowed.

Done in open court this 12 day of April, 1932.

JEREMIAH NETERER,

Judge.

Filed Apr. 11, 1932. [15]

NOTICE OF APPEAL.

To ANTHONY SAVAGE, United States Attorney, and JEFFREY HEIMAN, Assistant United States Attorney:

NOTICE IS HEREBY GIVEN that the plaintiff and appellant Alaska Steamship Company hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of dismissal entered herein on the 21st day of March, 1932, and from each and every part thereof, and from each and every adverse ruling in the above-entitled cause.

ALASKA STEAMSHIP COMPANY, a Corporation,

By BOGLE, BOGLE & GATES,

Its Attorneys.

Copy rec'd April 11th, 1932.

JEFFREY HEIMAN,

Asst. U. S. Atty.

Filed April 11, 1932. [16]

PETITION FOR APPEAL.

To the Honorable JEREMIAH NETERER, District Judge:

The above-named plaintiff feeling aggrieved by the judgment of dismissal rendered and entered in the above-entitled cause on the 11th day of April, 1932, does hereby appeal from said judgment of

dismissal and each and every part thereof, and from each and every adverse ruling made in the above-entitled cause, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and it prays that its appeal be allowed, and that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said judgment of dismissal was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules of said court in such cases made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of it, be made.

ALASKA STEAMSHIP COMPANY a Corporation,

Plaintiff and Appellant.

By BOGLE, BOGLE & GATES,

Its Attorneys. [17]

ORDER ALLOWING APPEAL AND FIXING BOND.

Appeal allowed upon giving bond as required by law for the sum of $500.

Done in open court this 12 day of April, 1932.

JEREMIAH NETERER,

District Judge.

Filed Apr. 11, 1932. [18]

ASSIGNMENTS OF ERROR.

Now comes the plaintiff in the above-entitled cause and files its assignments of error upon which it relies upon the prosecution of the appeal in the above-entitled cause from the judgment of dismissal made by this Honorable Court on the 11th day of April, 1932:

1. That the United States District Court for the Western District of Washington, Northern Division, erred in holding that the plaintiff was not entitled to recover from the defendant the agreed compensation for the transportation of the shipwrecked crew of the steamship "Depere" on board the steamship "Yukon" from Ketchikan, Alaska, to the port of Seattle, Washington, the port of shipment of said crew, in pursuance of the shipwrecked seamen's certificate issued by M. S. Dobbs, Deputy Collector of Ketchikan, Alaska, to Captain Charles A. Glasscock, Master of the steamship "Yukon" wherein it was agreed that the defendant would pay said compensation to the plaintiff.

2. That the court erred in holding that the following provision of the Shipping Articles of the steamship "Depere," which said provision is prescribed and laid down by law in [19] § 713 of Title 46, U. S. C., required the plaintiff to return the crew of said vessel to the port of Seattle, irrespective and without regard to whether or not said vessel was shipwrecked and became totally disabled and unable to navigate or complete her voyage:

"It is agreed between the Master and seamen, or mariners, of the S. S. 'Depere' of New York, N. Y., of which J. Newland is at present Master, or whoever shall go for Master, now bound from the port of Seattle, Wash. to Ketchikan, Alaska, and such other ports and places in any part of Alaska and B. C., as the Master may direct, and back to a final port of discharge in the United States, for a term of time not exceeding two calendar months."

3. That the said court erred in failing to hold that the above quoted provision from the Shipping Articles of the steamship "Depere" prescribed and laid down by § 713, was not restricted, limited and modified by and subject to § 593, Title 46, U. S. C., which provides that in case of shipwreck the wages of seamen shall terminate and said seamen shall be transported back to the port of shipment as provided by §§ 678, 679 and 681 of Title 46 U. S. C.

4. That said court erred in holding that the aforesaid shipping articles imposed upon the shipowner the obligation to return shipwrecked seamen to the port of shipment, notwithstanding §§ 593, 678, 679, 680 and 681 of Title 46, U. S. C., all in chapter 18 of said Title 46, containing the law of this country relative to merchant seamen.

5. That said court erred in holding that the above quoted articles of the steamship "Depere" constituting an agreement between the Master of said vessel and the crew thereof, imposed an obligation on the owner of said vessel to return said seamen to the port of Seattle after the completion of

the voyage of the steamship "Depere" was rendered impossible by the wreck of the vessel. [20]

6. That the court erred in failing to hold that said shipwrecked seamen were shipwrecked and destitute seamen within the meaning of the above cited sections of Title 46, at all times after the steamship "Depere" was wrecked near Cape Decision, Alaska, and in failing to hold that said seamen were thereafter charges of the Government and were entitled to the benefit of the Act for the Relief and Protection of American Seamen at all times after being brought to the port of Ketchikan, Alaska, until they were transported to the port of Seattle, Washington, in pursuance of and in accordance with the above-cited sections of Title 46.

7. That said court erred in holding that upon being delivered to the master of the steamship "Yukon" at Ketchikan, the aforesaid shipwrecked seamen ceased to be destitute seamen within the meaning of said sections 593, 678, 679, 680 and 681 of Title 46.

8. That said court erred in holding that the plaintiff was obligated to return the shipwrecked seamen of the steamship "Depere" to the port of Seattle, notwithstanding the issuance of a shipwrecked seamen's certificate by the Deputy Collector of Customs at Ketchikan, Alaska, to the master of plaintiff's vessel "Yukon," wherein it was agreed on the part of the defendant that compensation would be paid to plaintiff by the defendant for transporting said seamen to the port of Seattle, and in holding that the issuance of said certificate and the execution of

said agreement by and between the Deputy Collector of Customs at Ketchikan, Alaska, and Captain Glasscock of the steamship "Yukon," gave no right to the plaintiff company for compensation out of the destitute seamen's fund.

9. That the said court erred in entering judgment of dismissal.

10. That the said court erred in denying plaintiff's and [21] appellant's motion for the entry of its proposed findings of fact and conclusions of law.

11. That the said court erred in refusing to make any special findings of fact and conclusions of law other than those embodied in its memorandum decision.

12. That the said court erred in denying plaintiff's and appellant's motion for judgment in its favor.

13. That the said court erred in granting defendant's and appellee's motion to dismiss plaintiff's and appellant's action, and granting judgment in defendant's and appellee's favor.

WHEREFORE plaintiff and appellant prays that said judgment of dismissal be reversed, and that said District Court for the Western District of Washington, Northern Division, be ordered to enter judgment and decree reversing the decision of judgment of dismissal of the lower court in said cause.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff and Appellant.

Filed April 11, 1932. [22]

COST BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That we, Alaska Steamship Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada licensed to do business in the State of Washington, as principal, and Pacific Indemnity Company, a corporation duly incorporated under the laws of the State of California and authorized to transact the business of surety in the State of Washington, as surety, are held and firmly bound unto the United States of America, defendant in the above-entitled cause, in the full sum of Five Hundred Dollars ($500), lawful money of the United States to be paid to it, to which payment well and truly to be made we bind ourselves jointly and severally, and our successors and assigns, by these presents.

Sealed with our seals and dated this 6th day of May, 1932.

WHEREAS, the above-named principal has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment of dismissal of the United States District Court for the Western District of Washington, Northern Division, made and entered on the 11th day of April, 1932. [23]

NOW, THEREFORE, the condition of this obligation is such that if the above-named principal shall prosecute its said appeal to effect, and if it fail to make its plea good shall answer all costs, then this

obligation shall be void; otherwise to remain in full force and effect.

ALASKA STEAMSHIP COMPANY, a Corporation,

[Seal] By W. T. FORD,
Secretary,
Principal.

PACIFIC INDEMNITY COMPANY, a Corporation,

[Seal] By CASSIUS E. GATES,
Its Attorney-in-fact,
Surety.

State of Washington,
County of King,—ss.

On this 6th day of May, 1932, before me personally appeared W. T. Ford, to me known to be the Secretary of the Alaska-Steamship Company, the corporation that executed the within and foregoing instrument as principal, and acknowledged the said instrument to be the free and voluntary act and deed of said principal for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for and on its behalf, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal] EDWARD G. DOBRIN,
Notary Public in and for the State of Washington,
Residing at Seattle. [24]

State of Washington,
County of King,—ss.

On this 6th day of May, 1932, before me personally appeared Cassius E. Gates, to me known to be the attorney-in-fact of the corporation that executed the within and foregoing instrument as surety, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument, and that the seal affixed thereto is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal] EDWARD G. DOBRIN,
Notary Public in and for the State of Washington,
Residing at Seattle.

The foregoing bond and the sufficiency of the surety thereon is approved as a cost bond on appeal.

Dated this 7th day of May, 1932.

NETERER,
District Judge.

Received a copy of the within cost bond this 7 day of May, 1932.

ANTHONY SAVAGE,
Attorney for Deft.

Filed May 7, 1932. [25]

[Title of Court and Cause.]

ORDER TRANSMITTING EXHIBITS.

It is ORDERED, ADJUDGED AND DECREED that the original exhibits in this cause be transmitted to the Circuit Court of Appeals with the transcript of record on appeal.

Done in open court this 11th day of April, 1932.

JEREMIAH NETERER,
District Judge.

Presented by:

NORMAN M. LITTELL,
Of Bogle, Bogle & Gates.

OK.—JEFFREY HEIMAN,
Asst. U. S. Atty.

Filed April 11, 1932. [26]

ORDER EXTENDING TIME TO AND INCLUDING APRIL 11, 1932, FOR FILING BILL OF EXCEPTIONS.

This matter having come on for hearing upon motion of the attorneys for the plaintiff Messrs. Bogle, Bogle & Gates, for an order extending the time within which to file its bill of exceptions to the decision and ruling of the court in the above-entitled cause, and it appearing to the court that the rules of this court require the filing of the bill of exceptions on or before April 1, 1932, and that attorneys for plaintiff require additional time in which to ex-

amine the records of this case and prepare their bill of exceptions, and that ten days' additional time will be sufficient for this purpose; now, therefore,

It is ORDERED, ADJUDGED AND DECREED that the time for filing a bill of exceptions in the above-entitled cause be and the same hereby is extended until April 11, 1932.

Done in open court this 29 day of March, 1932.

JEREMIAH NETERER,
Judge.

The foregoing order is approved by

ANTHONY SAVAGE,
U. S. District Attorney.
By TOM DE WOLFE,
Asst. U. S. Dist. Atty.

Presented by:

GEORGE T. NICKELL,
Of Bogle, Bogle & Gates.

Filed Mar. 29, 1932. [27]

PLAINTIFF'S BILL OF EXCEPTIONS.

BE IT REMEMBERED: That heretofore, to wit, on the 24th day of February, 1932, the above-entitled cause came on for trial at Seattle, Washington, in the United States District Court for the Western District of Washington, Northern Division, upon the issues joined herein before the Honorable Jeremiah Neterer, sitting as Judge of said court, without a jury, a jury having been duly waived by the parties by a written stipulation in the words and figures as follows, to wit:

"STIPULATION.

"It is hereby STIPULATED by and between the parties to the above-entitled cause that a jury in said cause be, and the same is hereby waived.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff.
ANTHONY SAVAGE,
By JEFFREY HEIMAN,
Assistant United States Attorney,
Attorneys for Defendant."

Whereupon the plaintiff respectfully offered and introduced the following evidence and exhibits of evidence, all of which were admitted without objection:

Plaintiff's Exhibit 1—A chart of the Territorial Waters of Alaska in the vicinity of Cape Decision. [28]

Plaintiff's Exhibits 2-3-4-5 and 6—Pictures showing wreck of beached vessel.

Plaintiff's Exhibit 7—Photostatic copy of shipwrecked seamen's certificate issued by the Deputy Collector of Customs at Ketchikan, Alaska, to Captain Charles A. Glasscock, of the steamship "Yukon," authorizing transportation of shipwrecked seamen to Seattle, Washington; also statement of agreed compensation sent to the Treasury Department of the United States Government by the Alaska Steamship Company demanding payment of compensation for transportation of shipwrecked seamen on the steamship "Yukon" to the Port of Seattle; also letter dated January 29, 1930, from J. R. Mc-

Carl, Comptroller General of the United States, to the Alaska Steamship Company, refusing to pay said compensation.

Defendant's Exhibit 1—Chart of Alaskan Waters.

And thereupon the plaintiff to maintain the issues of its part, introduced the following evidence, to wit:

I.

Captain John Newland, Mr. George J. Decker, Mr. Robert R. Stevens and Mr. George W. Parks, testified that said witnesses, respectively, in the order named, were the master, the second mate, the third mate and the purser of the plaintiff's steamship "Depere" in November, 1929. That on November 15, 1929, while said vessel was en route from Cordova to Ketchikan, Alaska, she struck a rock just off of Cape Decision, Alaska, at a point indicated as "X" on the chart marked Plaintiff's Exhibit 1. That said vessel began to fill with water and it was necessary, to save the vessel and crew, to beach said vessel at point "D" marked on Plaintiff's Exhibit 1. That said vessel was totally disabled and unable to complete her voyage and that all of the crew went ashore in the lifeboats at a point near the beached vessel. That the said steamship "Depere" was left in the position indicated in Plaintiff's Exhibits 2, 3, 4, 5 and 6. [29]

II.

That witnesses George J. Decker, Robert R. Stevens and George W. Parks testified that on the next day, to wit, on November 16, 1929, in response to radio messages which had been sent out from the

steamship "Depere" at the time of the above-described wreck, the United States Coast Guard cutter "Saigon" came to the position of the wreck and took aboard the crew of the steamship "Depere," to wit, thirty (30) men, and transported said crew to the Port of Ketchikan, Alaska, where they were landed on November 17, 1929.

III.

That George J. Decker, Robert R. Stevens and George W. Parks testified that they were landed together with the remainder of the crew of the steamship "Depere" in the total number of thirty men at the Port of Ketchikan, Alaska, as aforesaid, and that M. S. Dobbs, Deputy Collector of Customs of the United States Government in the Port of Ketchikan, took full charge of said shipwrecked crew and provided each and every man thereof with lodgings and sustenance until such times as said M. S. Dobbs could procure their shipment back to the Port of Seattle. That all of said crew remained in the Port of Ketchikan from November 17 until November 20. That at all times during said period the aforesaid M. S. Dobbs, Deputy Collector of Customs, acting for and on behalf of the defendant and at the defendant's expense, paid all living expenses of each and every member of the aforesaid crew.

IV.

That Captain Charles A. Glasscock and Joseph L. Large testified that they were, respectively, master and purser of the steamship "Yukon," a vessel belonging to the plaintiff, in the month of November,

1929, and that on the 20th day of November, 1929, said vessel stopped at the Port of Ketchikan, Alaska, en route for [30] the Port of Seattle, on her regular course. That the aforesaid M. S. Dobbs requested and demanded of said Captain Glasscock that he transport the aforesaid shipwrecked crew to the Port of Seattle, Washington, and issued to said Captain Glasscock a shipwrecked seamen's certificate authorizing said transportation and agreeing to pay therefore the compensation stated therein. That said shipwrecked seamen's certificate is in words and figures as follows, to wit:

"CERTIFICATE GIVEN BY CUSTOMS OFFICERS TO MASTERS OF VESSELS TRANSPORTING SHIPWRECKED AMERICAN SEAMEN TO THE UNITED STATES FROM ALASKA.

DEPARTMENT OF COMMERCE AND LABOR,
BUREAU OF NAVIGATION.

Office of Deputy Collector of Customs,
Port of Ketchikan, Alaska,
November 20th, 1929.

I HEREBY CERTIFY that I have sent to Seattle, Washington, on board the American St. S. YUKON, of 3638 tons burden, whereof C. A. Glasscock is master, the following shipwrecked American seamen:

Name of Seamen.	Name of vessel on which they last served.	Home port of vessel and time and place of wreck.
As per list attached	Am. St. S. DEPERE (220449)	New York 7:55 P. M. November 15, 1929 Port McArthur, S. E. Alaska
John Johanson	Pilot	
George J. Decker	2nd Officer	
Robert Stevens	3rd Officer	
Aldon Forron	Seaman	
Rennie Brandon	Seaman	
Fred Burns	Seaman	
Alfred Sundby	Seaman	
Raymond Torris	Seaman	

Name of Seamen.	Name of vessel on which they last served.	Home port of vessel and time and place of wreck.
George Hanson	Seaman	
Robert Brazant	Seaman	
Walter Houlton	Seaman	
Arthur Howgate	Cargo Handler	
Ingvald Johansen	Cargo Handler	
William Martinsen	Cargo Handler	
Nels Christoffersen	Engineer	
John Karlson	Engineer	
Wayne Davis	Engineer	
Charles McDonald	Oiler	
Albert Vann	Oiler	

Name of Seamen.	Name of vessel on which they last served.	Home port of vessel and time and place of wreck.
Gilbert Gonyeau [31]	Oiler	
Murdock LeCain	Fireman	
Cornelius Vandermark	Fireman	
George Angle	Fireman	
Frank O'Neill	Wiper	
George W. Parks	Purser	
John Schilling	Steward	
Joseph Jackson	Cook	
Wilford Edwards	Galley	
Jas. Caldwell	Mess Man	
James Ponte	Mess Boy	
Total 30		

I have agreed with the said master that upon presentation of this certificate at the Treasury Department, bearing an indorsement of the Collector of Customs at the port of Seattle, Washington, aforesaid that the seamen mentioned have been brought into his District by said vessel, he shall be entitled to receive the sum of Three Hundred Ninety-seven & 20/100 Dollars for their passage, being the sum of Thirteen and 24/100 for each seaman. But if the voyage shall continue beyond the period of thirty days from the date of sailing, and it shall be so certified by the Collector of Customs, the said master shall be entitled to receive the sum of —— dollars for their passage, being the sum of —— dollars for each seaman.

And I further certify that the regular charge for steerage passage on said vessel from this port to Seattle, Washington, in the United States is $17.00, and that the distance is 662 miles.

Given under my hand and seal of office this 20th day of November, 1929.

M. S. DOBBS,
Deputy Collector of Customs.

Office of the Collector of Customs,
Port of Seattle, Washington,
November 22, 1929.

I HEREBY CERTIFY, under seal of my office, that the seamen, to the number of 30, named in the above Customs certificate, have arrived within this District on the above named vessel, of 3638 net tons burden, as per register, enrollment, or license on file

in this office, and that the voyage from Ketchikan, Alaska, covered a period of 2 days.

[Seal] OSCAR W. DAM,
Deputy Collector of Customs."

being part of Plaintiff's Exhibit 7.

V.

That the said Captain Glasscock and the said Joseph L. Large testified that the shipwrecked crew of the steamship "Depere" [32] were taken aboard the steamship "Yukon" on November 20, 1929, at the Port of Ketchikan, Alaska, in pursuance of and in obedience to the demand of the aforesaid M. S. Dobbs, and in consideration of the shipwrecked seamen's certificate above set forth, and that said crew was thereupon transported to the port of Seattle, Washington, at which port they were landed on November 22, 1929. That George W. Parks testified that the port of Seattle was the port of shipment for all of the aforesaid crew of the steamship "Depere" in the total number of thirty men, and that each of said crew had signed on the steamship "Depere" at Seattle, Washington.

VI.

That Mr. W. T. Ford testified that he was the auditor of the Alaska Steamship Company at all times hereinabove mentioned. That he had forwarded the aforesaid shipwrecked seamen's certificate to the Comptroller General of the United States with the demand for payment of the compensation therein agreed upon, to wit, the sum of Three Hun-

dred Ninety-seven and 20/100 Dollars ($397.20). That Mr. J. R. McCarl, Comptroller General of the United States, wrote a letter to the plaintiff on January 20, 1930, refusing to pay said compensation, said letter being in words and figures as follows, to wit:

"SETTLEMENT CERTIFICATE
GENERAL ACCOUNTING OFFICE
CLAIMS DIVISION
Washington, D. C.

January 20, 1930.

Alaska Steamship Company,
Room 4, Pier 2,
Seattle, Washington.

Sirs:

Your claim No. 070502(1) for $397.20 on account of transportation on your S.S. 'Yukon' furnished 30 shipwrecked seamen of the S.S. 'Depere' owned and operated by your company, which was wrecked at Port McArthur, S.E. Alaska, November 15, 1929, has been carefully examined and it is found that no part thereof may be allowed for reasons hereinafter stated.

The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator and where this duty has been undertaken the appropriation for the [33] "Relief and Protection of American Seamen" is not available to reimburse the owner or operator for the expense incurred in performing such duty.

I therefore certify that no balance is found due you from the United States.

Respectfully,

J. R. McCARL,

Comptroller General of the United States.

By: F. A. SHUMAKER."

Mr. Ford further testified that he had been in the employ of the Alaska Steamship Company for twenty-one or twenty-two years; that he had known of a number of cases in which seamen shipwrecked in the Territorial Waters of Alaska had been taken to Alaskan ports and shipped to the United States at the expense of the Government. That in three of such cases, to wit, in the cases of the shipwrecks of the steamship "Portland," the steamship "Olympia," and the steamship "Mariposa," the first two being shipwrecked in 1909 or 1910, and the last being wrecked in 1918, the crews of said vessels after being taken to an Alaskan port had been shipped to the United States port of Seattle upon the issuance by a Deputy Collector of Customs of a shipwrecked seamen's certificate upon the form set forth above, and that in each of said cases the compensation agreed upon in said certificate had been paid by the Government. That each of said wrecked vessels had belonged to the Alaska Steamship Company, and in each case the shipwrecked crew of said vessel had been shipped back to the Port of Seattle upon another vessel belonging to the Alaska Steamship Company upon the issuance of the shipwrecked seamen's certificate as aforesaid, and that in each of said cases notwithstanding the fact that both the

wrecked vessel and the vessel transporting the ship wrecked crew to Seattle were owned by the Alaska Steamship Company, the compensation agreed upon had been paid by the Government. [34]

VII.

Mr. Oscar W. Dam testified that he was Deputy Collector of Customs in charge of the Marine Division of the United States Customs office in the Port of Seattle, Washington. That he had occupied said position since 1919. That the Customs Regulations require the Customs officials in Alaska to make an agreement with the master of a vessel bound for the Port of Seattle for the transportation of shipwrecked seamen in an Alaskan port, and to arrange for the transportation of said seamen to the United States. That it has been the established practice of the Customs officials acting under the aforesaid Regulations to issue shipwrecked seamen's certificates for the transportation of shipwrecked seamen in Alaska to the United States. That in accordance with said regulations the witness, as Deputy Collector of Customs in the Port of Seattle, examined said certificate upon the arrival of the transporting vessel in the Port of Seattle, checked the number of seamen returned and certified on the bottom of said certificate in each case that said shipwrecked seamen had been landed at said port, said practice being in accordance with the Regulations of the Department of Commerce. Mr. Dam further testified that he had verified the arrival of the crew of the steamship "Depere" on board the steamship "Yukon" on November 2, 1929, in the Port of Seattle, and had certified

to their arrival on the bottom of said certificate, his signature appearing at the bottom of said certificate in Plaintiff's Exhibit 7. Mr. Dam further stated that he had in hand a record of all shipwrecked seamen landed at the Port of Seattle since 1919, and that all of said seamen had been sent to Seattle in pursuance of shipwrecked seamen's certificates issued by a Collector or Deputy Collector of Customs in an Alaskan port. [35]

Whereupon the plaintiff rested, and the defendant stating that it had no testimony or evidence to submit, challenged the legal sufficiency of the evidence offered by and on behalf of the plaintiff and moved to dismiss the action. Thereupon the court took said motion under advisement and the plaintiff then moved the court for the entry of its proposed findings of fact and conclusions of law and for judgment in favor of the plaintiff and thereupon submitted the following proposed findings of fact and conclusions of law: [36]

FINDINGS OF FACT.

I.

That the plaintiff is now and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of Nevada; that it is licensed to do business in the State of Washington and has paid thereto its annual license fee last past due; that it is resident within the Western District of Washington, having its principal place of business in the City of Seattle, County of King, State of Washington.

II.

That the defendant is now and at all times herein *mention* was a sovereign state.

III.

That the plaintiff is now and at all times hereinafter mentioned was the owner and operator of the following merchant vessels of the United States engaged as common carriers for hire, to wit: The SS. "Yukon" and the SS. "Depere," which said vessels were and now are operated by the plaintiff between the Port of Seattle and ports in the Territory of Alaska.

IV.

That on or about the 15th day of November, 1929, the aforesaid SS. "Depere," while nearing Cape Decision, Alaska, struck a submerged rock which stove a hole in the bottom of the vessel and permitted water to flow rapidly into said vessel. That the said vessel was thereafter in extreme danger and it was necessary to beach the vessel to prevent her from sinking with the possible loss of lives, vessel and cargo. That the master of the vessel caused her to be steered around Cape Decision toward Port McArthur just north of said cape to secure a safe place to beach the vessel. That said vessel was rapidly filling with water and it was impossible to reach the inlet entitled Port McArthur and it was necessary to run said vessel upon the shore between Cape Decision and Port McArthur. That after the SS. "Depere" was beached [37] at said point, the water continued to flow into her hold, and she settled upon

the bottom and was totally unmanageable and incapable of continuing upon her voyage. That in the judgment of her officers it was impossible for said vessel to complete her voyage to Seattle or navigate to any other point, and that it was to them uncertain whether or not said vessel could be salvaged or removed from the position in which she lay. That the crew of said ship went ashore in the lifeboats, taking provisions with them. That the wireless operator sent messages from the radio room of the SS. "Depere" requesting help, which room being in the upper portion of the vessel remained above water, and that in response thereto on the following day a United States coast guard cutter, the SS. "Saigon," came to the scene of the wreck and took aboard the shipwrecked seamen. That the said SS. "Saigon" transported the shipwrecked crew to Ketchikan, Alaska. That upon the arrival of said crew in Ketchikan, Alaska, the United States Customs Office for and on behalf of the defendant, acting through Mr. M. S. Dobbs, Deputy Collector of Customs at Ketchikan, took full charge of said shipwrecked crew, provided hotel accommodations for them at the expense of the defendant and provided subsistence for said crew during such time as they should remain in Ketchikan until arrangements could be made for their transportation to the United States.

V.

That the aforesaid SS. "Yukon," belonging to the plaintiff, stopped in the Port of Ketchikan, Alaska, *en route* for Seattle, during the time when the ship-

wrecked crew of the SS. "Depere" was in the care of the United States Deputy Collector of Customs, M. S. Dobbs. That the said Deputy Collector of Customs, acting for and on behalf of the defendant, and in pursuance of the [38] laws and regulations of the United States providing for the care of shipwrecked seamen, to wit: U.S.C.A., Title 46, sections 678, 679, 680 and 681, requested and required the master of the said SS. "Yukon" to transport the aforesaid shipwrecked crew to Seattle, Washington, on board the SS. "Yukon." That on November 20, 1929, the said Deputy Collector of Customs, acting for and on behalf of the defendant, agreed in writing with the said master of the SS. "Yukon" that compensation in the total sum of $397.20 should be paid by the defendant for the transportation of said crew of thirty men to the Port of Seattle, Washington. That the said Deputy Collector of Customs issued to the aforesaid master of the SS. "Yukon" a shipwrecked seamen's certificate, a photostatic copy of the original of said certificate having been admitted in evidence as Plaintiff's Exhibit No. 7.

VI.

That it was the established practice of the defendant for a period of many years prior to the shipwreck hereinabove mentioned, to wit, not later than the beginning of the present century, to transport from Alaskan ports seamen shipwrecked in Alaskan waters to the port of Seattle, Washington, at the expense of the defendant, whenever such transportation was authorized by a shipwrecked seamen's

certificate issued by a Collector of Customs or a Deputy Collector of Customs in Alaskan ports. That on many occasions within the period of years above indicated, the plaintiff herein has transported on one or another of its vessels plying between Seattle and Alaskan ports, the seamen of various vessels wrecked in Alaskan waters, upon the demand of the aforesaid Customs officers, and upon the issuance of the aforesaid shipwrecked seamen's certificates to the master of plaintiff's vessel or vessels, and that in each of such instances, the defendant [39] acting through the Comptroller General of the Treasury, has paid the amount of compensation agreed upon in said certificate upon demand of the plaintiff, and at no time prior to this instance has payment of said compensation to the plaintiff been refused. That on not less than three occasions within the aforesaid period the plaintiff Steamship Company has transported from an Alaskan port to Seattle, upon the demand of a customs official and upon issuance of a shipwrecked seamen's certificate, as in the instant case, shipwrecked seamen who had served upon a vessel owned by the plaintiff which had been wrecked in Alaskan waters, and in each of said instances compensation was paid by the defendant as specified in said certificate upon demand being made therefor upon the defendant. That it was the practice of the Department of Commerce of the United States Government during the aforesaid period of years prior to the shipwreck hereinabove described, to regard seamen of American vessels shipwrecked in Alaskan waters as destitute seamen within the

meaning of sections 593, 678, 679, 680 and 681 of U.S.C. Title 46, and that said Department of Government supplied its agents and the agents of the defendant, to wit, the Customs officials in Alaska, with printed forms entitled:

"CERTIFICATE GIVEN BY CUSTOMS OFFICERS TO MASTERS OF VESSELS TRANSPORTING SHIPWRECKED AMERICAN SEAMEN TO THE UNITED STATES FROM ALASKA.

DEPARTMENT OF COMMERCE AND LABOR, BUREAU OF NAVIGATION."

and instructed said agents to arrange for the transportation to the United States of the shipwrecked seamen by issuing said certificates to the masters of the vessels bound for the United States, requiring them to transport said seamen to the United States for a compensation agreed upon in said certificates as provided by the aforesaid sections of the U. S. Code. That it was likewise the [40] practice of the Comptroller General of the United States during said period to pay out and disburse from the "Appropriation for the Relief and Protection of American Seamen," upon presentation of the aforesaid shipwrecked seamen's certificate to the Treasury Department of the United States, the sums agreed to be paid in said certificates for the transportation of shipwrecked seamen from Alaskan ports to the United States, as specified in §§ 679, 680 and 681 of Title 46, U. S. C.

VII.

That on the 2d day of December, 1929, the plaintiff sent to the Treasury Department of the United States Government a statement of the account claimed to be owing to the plaintiff from the defendant in the sum of $397.20, together with the destitute seamen's certificate above mentioned properly endorsed by the Collector of Customs of Seattle, Washington, the aforesaid sum of $397.20 being the compensation specified in said certificate and in § 680, Title 46, U. S. C., for the transportation of said shipwrecked seamen to the Port of Seattle. That shortly thereafter the Comptroller General of the United States on behalf of the defendant refused to pay said compensation to the plaintiff, upon the grounds and for the reasons stated in his letter of January 29, 1930, to the plaintiff, a true copy of which said letter being set forth below:

"Washington, D. C.,
"January 29, 1930.

"Alaska Steamship Company,
"Room 4, Pier 2,
"Seattle, Washington.

"Sirs:

"Your Claim No. 07502(1) for $397.20 on account of transportation on your SS. 'Yukon' furnished 30 shipwrecked seamen of the SS. 'Depere' owned and operated by your company, which was wrecked at Port McArthur, S. E. Alaska, November 15, 1929, has been carefully examined and it is found that no

part thereof may be allowed for reasons hereinafter stated.

"The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator and where this duty has been undertaken the appropriation [41] for the 'Relief and Protection of American Seamen' is not available to reimburse the owner or operator for the expense incurred in performing such duty.

"I therefore certify that no balance is found due you from the United States.

"Respectfully,

"J. R. McCARL,

"Comptroller General of the United States.

"By: (Sgd.) F. A. SHUMAKER."

That the defendant at all times after sending the above-quoted letter refused and does now refuse to pay the sum of $397.20, the compensation agreed upon in the aforesaid shipwrecked seamen's certificate, for the transportation of the shipwrecked crew of the SS. "Depere" to the Port of Seattle.

VIII.

That the shipping articles of the SS. "Depere" upon the voyage on which said vessel was wrecked as above set forth provided as follows:

> "It is agreed between the Master and seamen, or mariners, of the SS. 'Depere' of New York, N. Y., of which J. Newland is at present Master, or whoever shall go for Master, now bound from the port of Seattle, Wash. to Ketchikan, Alaska, and such ports and places in any

part of Alaska and B. C., as the Master may direct, and back to a final port of discharge in the United States, for a term of time not exceeding two calendar months."

Done in open court this 12 day of February, 1932.

JEREMIAH NETTERER,
District Judge. [42]

From the foregoing findings of fact, the Court states the following

CONCLUSIONS OF LAW.

I.

That § 593 of Title 46, U. S. C., § 4526 R. S., applies to the loss or wreck of a vessel in the waters of the noncontiguous Territory of Alaska as well as to the loss or wreck of vessels in foreign waters or countries, and that the seamen of vessels wrecked on the shores of the Territory of Alaska or in the Territorial Waters of Alaska, are destitute seamen within the meaning of said section.

II.

That §§ 678, 679, 680 and 681 of Title 46, U. S. C., apply to seamen shipwrecked in the Territory of Alaska or in the territorial waters of Alaska with the same force and effect as they apply to seamen shipwrecked in foreign lands, and that said sections together with § 593 construed in conjunction with the appropriation acts "For the Relief and Protection of American Seamen in * * * the Territory of Alaska," to wit, 42 Stat. 1072, 43 Stat. 1017, 44 Stat. 334, 1183, 45 Stat. 68, 1098, authorize

the transportation of shipwrecked or destitute seamen in Alaska to the port of shipment in the United States upon the issuance of a shipwrecked seamen's certificate by an authorized agent of the Department of Commerce of the United States Government, to wit, by the Collector or Deputy Collector of Customs in an Alaskan port, and upon presentation of said certificate to the United States Treasury the Comptroller General is obligated to pay said compensation forthwith, if the amount thereof is in accordance with the above-cited statutes prescribing the rates for such transportation."

III.

That the owner of the wrecked vessel stands upon the same footing [43] as all other vessel owners with respect to the right to receive compensation for transporting shipwrecked seamen to a port in the United States, and such seamen are so transported from an Alaskan port upon the order of a Collector or Deputy Collector of Customs and upon the issuance by the latter of a shipwrecked seamen's certificate to the master of the transporting vessel, as provided by §§ 678, 679 and 680, Title 46, U. S. C., the owner of such vessel holding said certificate is entitled to the compensation specified and allowed by statute, and the right to said compensation is not affected by the fact that the owner of the transporting vessel also owns the vessel upon which the seamen were wrecked. That the plaintiff is entitled to recover judgment against the defendant in the sum of $397.20.

Done in open court this —— day of February, 1932.

_____,
District Judge.

Presented by:

_____. [44]

Whereupon the court denied said motion of the plaintiff, to which ruling the plaintiff excepted and its exception was allowed. Whereupon the court took the case under advisement until March 21, 1932, on which date it entered its memorandum opinion as follows, to wit:

"On December 15, 1929, the SS. 'Depere' was wrecked at or near Port McArthur, southeastern Alaska, and unable to proceed on its voyage. No other vessel of plaintiff was available. The crew consisted of 35 seamen that were taken to Port McArthur, and from there transported to Ketchikan, Alaska. The customs office, by the deputy collector at Ketchikan, took full charge of the crew upon arrival, and provided subsistence until transported on the plaintiff's SS. 'Yukon' to port of Seattle, Washington, the 'Depere's' debarking port.

"Upon the arrival of the SS. 'Yukon' on the port of Ketchikan, en route to Seattle, the deputy collector of customs, under the provisions of Title 46 USCA, secs. 678 and 679, required the master of said ship to transport said crew of seamen, and agreed in writing to pay therefor the sum of $397.20, being $13.24 for each seaman. The seamen were trans-

ported, landed at the port of Seattle on the 22d of November 1929, which fact was certified by the United States Collector of Customs at the port of Seattle, and thereafter the said certificate was transmitted to the Treasury Department of the United States, together with a statement of account for said transportation, and the destitute seamen's certificate; and that thereafter payment thereof was denied for the given reason: 'The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator and where this duty has been undertaken the appropriation for the "Relief and Protection of American Seamen" is not available to reimburse the owner or operator for the expense incurred in performing such duty.' And this action followed.

"The shipping articles contain the following provisions: 'It is agreed between the Master and seamen, or mariners, of the SS. "Depere" of New York, N. Y., of which J. Newland is at present Master, or whoever shall go for Master, now bound from the port of Seattle, Wash., to Ketchikan, Alaska, and such other ports and places in any part of Alaska and B. C., as the Master may direct, and back to a final port of discharge in the United States, for a term of time not exceeding two calendar months.'

"Benefits accruing to the seamen under the stipulation were wages and maintenance and

medical attendance and cure during voyage, and also right of the seamen to be returned.

"By sec. 593, Title 46, USCA, upon shipwreck, the right to wages terminated, and had a vessel of the plaintiff been available at Port McArthur, the obligation no doubt would have been executed; none available, the seamen were for the time considered as totally destitute (sec. 593, *supra*), and as such were maintained by the Collector of Customs and taken to Ketchikan where a ship of the plaintiff was available, and there delivered to the master of [45] the 'Yukon,' plaintiff's vessel, with a certificate of the Deputy Collector of the destitute condition of the seamen, and on agreement to transport for a stipulated sum. See sec. 543, Title 46, USCA.

"No point is made that the Collector was not qualified to make the agreement and certificate of destitute seamen. As to the point that the law has no application to Alaska, it may be said that the Court judicially knows that Alaska is not contiguous to the United States; that geographically it is foreign, and that by the act of January 3, 1923 (42 Stat. 1072), and repeated thereafter (43 Stat. 1017; 44 Stat. 334, 1183; 45 Stat. 68, 1098) seamen in Alaskan waters are placed on the same basis as seamen of the politically foreign countries, and appropriations made 'For the relief and protection of American seamen in * * * the territory of Alaska.'

"The primary object of the appropriation is for the relief of destitute seamen, and not for the benefit of the steamship company. Upon being delivered to the master of the plaintiff's ship, 'Yukon,' at Ketchikan, the seamen were no longer destitute. The plaintiff was able to maintain its obligation to return the seamen to the place of debarkation, and the certificate of the deputy collector, thought it may have been the inducing cause to the master to accept the seamen for transportation, gave no right to the company for compensation out of the destitute seamen's fund.

"This court, in passing upon the demurrer to the complaint, said that to deny the right would deprive the owner of the vessel of the privileges of the limitation of liability statute. The trial developed nothing which would operate against the owner in the issue at bar on that account. There is no evidence that the vessel was lost, nor was limitation of liability invoked, and the mere assertion of right is because of the disablement of the ship and the destitute seamen's appropriation fund.

"An order of dismissal may be presented.

"JEREMIAH NETERER,
"United States District Judge."

and the court ordered that said memorandum opinion be entered as its findings of fact and conclusions of law, and the plaintiff took exception to said memorandum decision and each and every part thereof and to the said order adopting the

court's opinion as its findings of fact and conclusions of law, and to each and every part thereof, which exceptions were duly allowed. The plaintiff's alternative motion for judgment in its favor was denied, to which plaintiff duly took exception and its exception was allowed, and thereafter the defendant's motion for dismissal of [46] the plaintiff's action was allowed and an order duly entered dismissing said action as follows, to wit:

"JUDGMENT OF DISMISSAL.

"This cause having heretofore come on for hearing and the motion of the defendant for judgment having heretofore been granted, now therefore

"IT IS ORDERED, ADJUDGED and DECREED that this cause be, and the same is hereby dismissed and the defendant awarded judgment against the plaintiff for its costs and disbursements herein to be taxed.

"To the foregoing and each and every part thereof the plaintiff excepts and its exception is allowed.

"Done in open court this 11th day of April, 1932.

"JEREMIAH NETERER,

"Judge."

to which order plaintiff duly excepted and its exception was allowed. Each of said exceptions of the plaintiff was based upon the grounds set forth by the plaintiff in its memorandum of authorities in support of its motion for judgment in its favor, to wit, upon the grounds that plaintiff was entitled to judgment against the defendant as a matter of law; that the statutes for the relief and protection

of American seamen and for the transportation of shipwrecked and destitute seamen in foreign ports or the Territory of Alaska to the United States authorize the payment of compensation to the vessel transporting such seamen from Alaskan ports to a port in the United States upon the presentation to the United States Treasury of a shipwrecked seamen's certificate by a Collector or Deputy Collector of Customs in the said Alaskan port; and on the grounds that said statutes authorize the payment of compensation as agreed on between the master of the transporting vessel and the said Customs official irrespective of and without regard to whether or not the vessel which transported the shipwrecked seamen upon the demand of the said Customs official was subject to [47] the same ownership as the vessel upon which said seamen were shipwrecked; and that the steamship "Yukon" belonging to the plaintiff, having transported the shipwrecked seamen from Ketchikan, Alaska, to the Port of Seattle upon the demand of the Deputy Collector of Customs M. S. Dobbs, and in pursuance of the agreement set forth in the shipwrecked seamen's certificate has earned the compensation agreed upon in said certificate and that the plaintiff is entitled to recover the same from the defendant.

And thereafter on the 29th day of March, 1932, the court entered an order allowing the plaintiff until the 11th day of April, 1932, to present and file its bill of exceptions in said cause.

And thereafter on the 11th day of April, 1932, the following order was duly entered:

"It is ORDERED, ADJUDGED and DECREED that the original exhibits in this cause be transmitted to the Circuit Court of Appeals with the Transcript of Record on Appeal.

"Done in open court this 11th day of April, 1932.

"JEREMIAH NETERER,

"District Judge."

And at the trial of said cause such proceedings were had and such evidence was offered and such motions and such rulings by the court were made and such exceptions were taken and saved at the respective times of the several rulings in actions excepted to as herein indicated in the foregoing pages. Inasmuch as the matters and things above set forth do not fully appear of record, the said plaintiff Alaska Steamship Company tenders and presents the foregoing as its bill of exceptions in said cause and prays that the same may be settled, allowed and signed and sealed and made a part of the record in said cause by this Honorable Court, pursuant to the law in such cases.

Which is accordingly done and ordered by the Court on this 2d day of April, 1932, in term.

"JEREMIAH NETERER,

"District Judge." [48]

And now in furtherance of justice and that right may be done, the plaintiff tenders and presents the foregoing as its bill of exceptions in the above-entitled cause and prays the same may be settled and allowed, and signed and certified as provided by law.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff.

Copy received this 9th day of April, 1932.

ANTHONY SAVAGE,
United States Attorney.
By ANTHONY SAVAGE,
United States Attorney.

Approved as to form.

JEFFREY HEIMAN,
Ass't U. S. Atty.

[Endorsed]: Lodged Apr. 11, 1932.

[Endorsed]: Filed May 2, 1932. [49]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING MAY 21, 1932, FOR FILING RECORD.

This matter having come on regularly for hearing this 9th day of May, 1932, upon the stipulation of the parties hereto for an extension of time for the filing of transcript of appeal with the Clerk of the United States Circuit Court of Appeals for the 9th Circuit, and it appearing to the court that appellant should have until the 21st day of May, 1932, within which to file its transcript of record on appeal, now, therefore,

IT IS ORDERED, ADJUDGED and DECREED that the appellant Alaska Steamship Company shall have until the 21st day of May, 1932, within which to file its transcript of record on appeal in the above-entitled cause with the Clerk of the United States Circuit Court of Appeals for the 9th Circuit.

Done in open court this 9th day of May, 1932.

JEREMIAH NETERER,
District Judge.

Approved:

ANTHONY SAVAGE,
JEFFREY HEIMAN,
Asst. United States District Atty.,
Attorneys for Defendant and Appellee.

Filed May 9, 1932. [50]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL.

To the Clerk of the Above-entitled Court:

You will please prepare the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the above cause to consist of all necessary papers, including the following:

1. Complain.
2. Answer to the complaint.
3. Stipulation waiving jury.
4. Judgment of dismissal.
5. Order extending time for filing bill of exceptions.
6. Bill of exceptions.
7. Petition for appeal and order allowing appeal.
8. Assignment of errors.
9. Citation on appeal.
10. Notice of appeal.

11. Order transmitting exhibits.
12. Cost bond on appeal and order of approval.
13. This praecipe.
14. Clerk's certificate. [51]

You are requested except upon this praecipe to omit all captions except name of paper, to omit all acceptances of service except on instruments Nos. 6, 9, 10, 13 and 14, to omit verifications on instruments Nos. 1, 2 and 3, and to omit filing endorsements except date thereof.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff.

Received a copy of the within praecipe this 7 day of May, 1932.

ANTHONY SAVAGE,
Attorney for Deft.

Filed May 7, 1932. [52]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify that this typewritten transcript of record, consisting of pages numbered from 1 to 52, inclusive, is a full, true and complete copy of so much of the record, papers and

other proceedings in the above and foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same constitutes the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true, and correct statement of all expenses, costs, fees and charges incurred in my office or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, to wit: [53]

Clerk's fees (Act of Feb. 11, 1925), for making record, certificate or return, 127 folios at 15¢ per folio	$19.05
Appeal fee (Sec. 5 of Act)	5.00
Certificate of Clerk to Transcript of Record	.50
Certificate of Clerk to Original Exhibits	.50
Total	$25.05

I further certify that the above cost of preparing and certifying record, amounting to $25.05, has been paid to me by the attorneys for the appellant.

I further certify that I transmit herewith the original citation in the above-entitled cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the said

District Court at Seattle, in said District, this 11th day of May, 1932.

[Seal] ED. M. LAKIN,
Clerk of the United States District Court for the Western District of Washington.

By T. W. Egger,
Deputy. [54]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss.

To United States of America, Defendant and Appellee, and to ANTHONY SAVAGE, United States Attorney, Its Attorney, GREETING:

YOU, AND EACH OF YOU, are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit in the City of San Francisco, State of California, thirty (30) days from and after the day this citation bears date, pursuant to an order allowing an appeal filed and entered in the Clerk's office in the District Court of the United States for the Western District of Washington, Northern Division, from a judgment of dismissal, signed, filed and entered on the 11th day of April, 1932, in that certain suit being at law No. 20,365 wherein Alaska Steamship Company, a corporation, is plaintiff and appellant, and you are defendant and appellee, to show cause, if any there be, why the judgment of dismissal against the said plaintiff

and appellant as in said order allowing appeal mentioned, should not be corrected, and why justice should not be done to the parties in that behalf. [55]

WITNESS the Honorable JEREMIAH NETERER, United States District Judge for the Western District of Washington, Northern Division, this 12 day of April, 1932.

[Seal] JEREMIAH NETERER,
District Judge.

Copy received this 11 day of April, 1932.

JEFFREY HEIMAN,
Asst. United States District Atty.,
Attorney for Defendant and Appellee.

Filed Apr. 11, 1932. [56]

[Endorsed]: No. 6842. United States Circuit Court of Appeals for the Ninth Circuit. Alaska Steamship Company, a Corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed May 13, 1932.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 6842

United States
Circuit Court of Appeals
For the Ninth Circuit

ALASKA STEAMSHIP COMPANY,
a Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the September term, A. D. 1932, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Court Room in the City of Seattle, in the State of Washington, on Monday, the twelfth day of September, in the year of our Lord One Thousand Nine Hundred and Thirty-two.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge.

[Title of Cause.]

ORDER OF SUBMISSION.

ORDERED appeal argued by Mr. Norman M. Littell, counsel for appellant, and by Mr. Jeffrey Heiman, Assistant United States Attorney, counsel for appellee, and submitted to the Court for consideration and decision, with leave to counsel for appellant to file reply brief in five (5) days from date.

At a stated term, to wit, the October Term, A. D. 1932, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday, the thirteenth day of February, in the year of our Lord One Thousand Nine Hundred and Thirty-three.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge, Honorable JULIAN W. MACK, Circuit Judge.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT.

By direction of the Court, ORDERED that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk and that a judgment be filed and recorded in the minutes of this Court in accordance with the opinion filed.

[Title of Court and Cause.]

OPINION OF UNITED STATES CIRCUIT COURT OF APPEALS.

Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Before: WILBUR and SAWTELLE, Circuit Judges.

SAWTELLE, Circuit Judge:

This action was brought in the District Court by appellant to recover the cost of transporting from Ketchikan, Alaska, to Seattle, Washington, the crew of the steamship Depere, owned and operated by appellant, which vessel, on November 15, 1929, while en route from Seattle to Ketchikan, was wrecked near Port McArthur, Alaska, where the crew went ashore. The following day, November 16, in response to radio messages from the Depere at the time of the wreck, a United States Coast Guard boat transported the crew of the Depere to Ketchikan, Alaska, where they were landed on November 17, 1929. The United States Deputy Collector of Customs at Ketchikan took charge of the crew of the Depere as destitute seamen and provided them with lodging and sustenance, as required by §§678 and 679 of Title 46, U. S. C. A., which are as follows:

> "§678. Subsistence to destitute seamen; return to United States. It shall be the duty of the consuls and vice consuls, from time to

time, to provide for the seamen of the United States, who may be found destitute within their districts, respectively, sufficient subsistence and passages to some port in the United States, in the most reasonable manner, at the expense of the United States, subject to such instructions as the Secretary of State shall give. The seamen, if able, shall be bound to do duty on board the vessels in which they may be transported, according to their several abilities."

"§679. Transportation of destitute seamen to United States. All masters of vessels of the United States, and bound to some port of the same, are required to take such destitute seamen on board their vessels, at the request of consular officers, and to transport them to the port in the United States to which such vessel may be bound on such terms, not exceeding $10 for each person for voyages of not more than thirty days, and not exceeding $20 for each person for longer voyages, as may be agreed between the master and the consular officer, when the transportation is by a sailing vessel; and said consular officer shall issue certificates for such transportation, which certificates shall be assignable for collection. If any such destitute seaman is so disabled or ill as to be unable to perform duty, the consular officer shall so certify in the certificate of transportation, and such additional compensation shall

be paid as the Comptroller General of the United States shall deem proper. Every such master who refuses to receive and transport such seamen on the request or order of such consular officer shall be liable to the United States in a penalty of $100 for each seaman so refused. The certificate of any such consular officer, given under his hand and official seal, shall be presumptive evidence of such refusal in any court of law having jurisdiction for the recovery of the penalty. No master of any vessel shall, however, be obliged to take a greater number than one man to every one hundred tons burden of the vessel on any one voyage or to take any seaman having a contagious disease."

November 20, 1929, the Deputy Collector of Customs issued a shipwrecked seamen's certificate addressed to the master of the steamship Yukon, also owned and operated by appellant, requiring the master of the Yukon to transport the crew of the Depere to the port of Seattle, Washington, and agreeing to compensate appellant for such transportation in a certain amount. The United States Deputy Collector of Customs at Seattle certified to the arrival of the crew of the Depere via the Yukon on November 22, 1929.

Appellant then applied to the Comptroller General of the United States for the compensation stipulated in the shipwrecked seamen's certificate. This claim was rejected on the ground that:

"The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator and where this duty has been undertaken the appropriation for the 'Relief and Protection of American Seamen' is not available to reimburse the owner or operator for the expense incurred in performing such duty."

This action was then brought to recover said sum, and it was alleged:

"That the aforesaid action of the Comptroller General of the United States in refusing to pay the claim of the plaintiff as set forth herein constitutes an arbitrary and wrongful act; that the aforesaid ruling of the Comptroller General represented by the above-quoted letter is an arbitrary and unlawful construction and interpretation of the above-cited statutes [46 U. S. C. A., §§678, 679] and that such construction and interpretation placed upon the said statutes by the Comptroller General is arbitrary and illegal in the following respects, to wit: It violates and contravenes the statutes of the United States expressly allowing compensation to ship-owners transporting shipwrecked seamen to the United States, and making it the duty of the consular officers and commercial agents of the United States, and not of the owners of the shipwrecked vessel, to provide subsistence and transportation for the shipwrecked crew to some port in the

United States; it renders said statutes unconstitutional and in violation of the Fifth Amendment of the Constitution of the United States, in that it results in a taking of property without just compensation or due process of law."

The record shows that it has been the practice and custom of the United States since the beginning of the present century to transport from Alaskan ports seamen shipwrecked in Alaskan waters to the port of Seattle, Washington, at the expense of the United States, whenever such transportation was authorized by a shipwrecked seamen's certificate issued by a Collector of Customs or a Deputy Collector of Customs in Alaskan ports; that on many occasions during this period appellant has transported on one or another of its vessels plying between Seattle and Alaskan ports, seamen of various vessels wrecked in Alaskan waters, upon the demand of the customs officers, and upon the issuance of shipwrecked seamen's certificates; that in each of such instances the United States, acting through the Comptroller General of the Treasury, has paid the amount of compensation agreed upon in said certificate upon demand of appellant; that at no time prior to this instance has payment of such compensation to appellant been refused; that on not less than three occasions appellant has transported from an Alaskan port to Seattle, upon the demand of a customs official and upon issuance of a shipwrecked sea-

men's certificate, as in this case, shipwrecked seamen who had served upon a vessel owned by appellant which had been wrecked in Alaskan waters, and in each instance compensation was paid by the United States as specified in the certificate, upon demand by appellant; that it has been the practice of the Department of Commerce of the United States to regard seamen of American vessels shipwrecked in Alaskan waters as destitute seamen within the meaning of Sections 593, 678, 679 and 680 of Title 46, U. S. C. A., and that the Department of Commerce has supplied the customs officials in Alaska with printed forms entitled "Certificate given by Customs Officers to Masters of Vessels Transporting Shipwrecked American Seamen to the United States from Alaska—Department of Commerce and Labor, Bureau of Navigation," and has instructed such officers to arrange for the transportation to the United States of shipwrecked seamen by issuing said certificates to the masters of vessels bound for the United States, requiring them to transport said seamen to the United States for a compensation agreed upon in said certificates; and that it likewise has been the practice of the Comptroller General of the United States to pay out and disburse from the "Appropriation for the Relief and Protection of American Seamen," upon presentation of a shipwrecked seamen's certificate to the Treasury Department of the United States, the sum agreed to be paid in such certificate.

The trial Court rendered a memorandum opinion, as its findings of fact and conclusions of law, ordering a judgment of dismissal. (60 F. (2d) 135.)

The shipping articles contain the following provision:

> "It is agreed between the Master and seamen, or mariners, of the S. S. Depere, of New York, N. Y., of which J. Newland is at present Master, or whoever shall go for Master, now bound from the port of Seattle, Wash., to Ketchikan, Alaska, and such other ports and places in any part of Alaska and B C., as the Master may direct, and back to a final port of discharge in the United States, for a term of time not exceeding two calendar months."

The learned trial Court held that these articles imposed an obligation on the owner of the vessel to return the seamen to the port of shipment after the wreck of the vessel. While we are affirming the judgment on another ground, we do not wish to be understood as approving that construction of the articles. As we construe them, they merely describe the voyage, the general nature and probable length thereof, and the port at which the voyage was to terminate. In the event of the wreck of a vessel, the statute itself fixes the status of the destitute seamen. Section 593 of Title 46, U. S. C. A., reads as follows:

> "§593. Termination of wages by loss of vessel; transportation to place of shipment. In cases where the service of any seaman ter-

> minates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seamen shall be entitled to wages for the time of service prior to such termination, but not for any further period. Such seaman shall be considered as a destitute seaman and shall be treated and transported to port of shipment as provided in sections 678, 679 and 681."

And this section, when construed in connection with the above quoted sections, provide for the return transportation of the seamen to the port of shipment at the expense of the Government, provided, of course, such transportation is from a foreign port and that suitable arrangements for such transportation are made as required by said statutes. In the absence of a provision in the shipping articles obligating the owner of the vessel to return the seamen to the port of shipment, the contract was terminated by shipwreck; otherwise the law would not have placed the burden of returning such seamen upon the Government.

Appellant lays great stress upon the act of January 3, 1923 (42 Stat. 1072), which reads as follows:

> "Relief and protection of American seamen in foreign countries, and in the Panama Canal Zone, and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, Porto Rico, the Philippine Islands, and the Virgin Islands, $200,000; provided, that here-

after the amount agreed upon between the consular officer and the master of the vessel in each individual case not in excess of two cents per mile, together with such additional compensation for transporting sick or disabled seamen as is now provided by law, shall in each case constitute the lawful rate for transportation on steam vessels."

Undoubtedly, it was the intention of Congress, as manifested by this act, to extend the appropriation for that year to the transportation of shipwrecked seamen from Alaskan ports to the United States, but the terms of the act would seem to indicate that this purpose has failed of accomplishment, there being, of course, no American consular officer in Alaska. This proviso as to transportation was not carried into subsequent appropriation acts for the relief and protection of shipwrecked American seamen in the Territory of Alaska. The general legislation upon the subject of such transfer made no specific reference to the Territory of Alaska, nor to any other specific territory, but simply authorized payment for such transportation solely upon the certificate of an American consular officer. The question is whether or not the certificate of the Deputy Collector of Customs at Ketchikan satisfies the above quoted statute (§§678, 679, Title 46, U. S. C. A.) We are of opinion that it does not, and that there is no authority for entering a judgment against the United States based upon such a certifiate, or upon a certificate of any

agent or officer of the Government other than the one specially authorized by statute. It follows therefore that the Government is not estopped from insisting upon the invalidity of the certificate or agreement in question. The fact that the seamen were delivered to the master of the steamship Yukon, owned by appellant, and by appellant transported to the port of shipment on that vessel, would not bar a recovery by appellant, if otherwise entitled thereto. 3 Decisions of Comptroller General 936.

The judgment of the District Court is affirmed, without prejudice to the right of appellant to apply to Congress for such relief as the facts of the case may warrant.

[Endorsed]: Opinion. Filed February 13, 1933. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 6842

ALASKA STEAMSHIP COMPANY,
a Corporation,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

JUDGMENT.

UPON APPEAL from the District Court of the United States for the Western District of Washington, Northern Division.

THIS CAUSE came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Northern Division, and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed, without prejudice to the right of appellant to apply to Congress for such relief as the facts of the case may warrant.

[Endorsed]: Judgment. Filed and entered February 13, 1933. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing seventy-nine (79) pages, numbered from and including 1 to and including 79, to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 4th day of May, A. D. 1933.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4086)